

Reference Copy Only. Do Not Mail to the FCC as an Application.

Submitted: 04/21/2009 at 16:59:10
File Number: 0003813915

FCC 601
Main Form

FCC Application for Radio Service Authorization: Wireless Telecommunications Bureau Public Safety and Homeland Security Bureau

Approved by OMB

3060 - 0798

See instructions for
public burden estimate

1) Radio Service Code: DV	1a) Existing Radio Service Code:
-------------------------------------	----------------------------------

General Information

2) (Select only one) (EX)	
NE - New MD - Modification AM - Amendment	RO - Renewal Only RM - Renewal/Modification CA - Cancellation of License
AU - Administrative Update WD - Withdrawal of Application DU - Duplicate License	NT - Required Notifications EX - Requests for Extension of Time RL - Registered Location/Link
3a) If this application is for a <u>D</u> evelopmental License, <u>D</u> emonstration License, or a <u>S</u> pecial Temporary Authorization (STA), enter the code and attach the required exhibit as described in the instructions. Otherwise enter ' <u>N</u> ' (Not Applicable).	(<input type="checkbox"/>) D M S N/A
3b) If this application is for Special Temporary Authority due to an emergency situation, enter 'Y'; otherwise enter 'N'. Refer to Rule 1.915 for an explanation of situations considered to be an emergency.	(<input type="checkbox"/>) Yes No
4) If this application is for an Amendment or Withdrawal, enter the file number of the pending application currently on file with the FCC.	File Number
5) If this application is for a Modification, Renewal Only, Renewal/Modification, Cancellation of License, Duplicate License, or Administrative Update, enter the call sign of the existing FCC license. If this is a request for Registered Location/Link, enter the FCC call sign assigned to the geographic license.	Call Sign
6) If this application is for a New, Amendment, Renewal Only, or Renewal/Modification, enter the requested authorization expiration date (this item is optional).	MM / DD
7) Is this application "major" as defined in §1.929 of the Commission's Rules when read in conjunction with the applicable radio service rules found in Parts 22 and 90 of the Commission's Rules? (NOTE: This question only applies to certain site-specific applications. See the instructions for applicability and full text of §1.929).	(<input type="checkbox"/>) Yes No
8) Are attachments (other than associated schedules) being filed with this application?	(<input checked="" type="checkbox"/>) Yes No

Fees, Waivers, and Exemptions

9) Is the Applicant exempt from FCC application fees?	(<input checked="" type="checkbox"/>) Yes No
10) Is the Applicant exempt from FCC regulatory fees?	(<input type="checkbox"/>) Yes No
11a) Does this application include a request for a Waiver of the Commission's Rule(s)? If 'Yes', attach an exhibit providing rule number(s) and explaining circumstances.	(<input type="checkbox"/>) Yes No
11b) If 11a is 'Y', enter the number of rule sections involved.	Number of Rule Section(s):
12) Are the frequencies or parameters requested in this filing covered by grandfathered privileges, previously approved by waiver, or functionally integrated with an existing station?	(<input type="checkbox"/>) Yes No

Applicant Information

13) FCC Registration Number (FRN): 0009825738			
14) Applicant/Licensee legal entity type: (Select One.) <input type="checkbox"/> Individual <input checked="" type="checkbox"/> Corporation <input type="checkbox"/> Unincorporated Association <input type="checkbox"/> Trust <input type="checkbox"/> Government Entity <input type="checkbox"/> Consortium <input type="checkbox"/> General Partnership <input type="checkbox"/> Limited Liability Company <input type="checkbox"/> Limited Liability Partnership <input type="checkbox"/> Limited Partnership <input type="checkbox"/> Other (Description of Legal Entity)			
15) If the licensee name is being updated, is the update a result from the sale (or transfer of control) of the license(s) to another party and for which proper Commission approval has not been received or proper notification not provided?			() Yes No
16) First Name (if individual):	MI:	Last Name:	Suffix:
17) Legal Entity Name (if other than individual): MDS Operations, Inc.			
18) Attention To: Kristen Ward			
19) P.O. Box:	And/Or	20) Street Address: 729 South Federal Highway, Suite 212	
21) City: Stuart		22) State: FL	23) Zip Code: 34994
24) Telephone Number: (877)677-6372		25) FAX: (561)463-8220	
26) E-Mail Address: kristen@mdsamerica.com			

27) Demographics (Optional):

Race: <input type="checkbox"/> American Indian or Alaska Native <input type="checkbox"/> Asian <input type="checkbox"/> Black or African-American <input type="checkbox"/> Native Hawaiian or Other Pacific Islander <input type="checkbox"/> White	Ethnicity: <input type="checkbox"/> Hispanic or Latino <input type="checkbox"/> Not Hispanic or Latino	Gender: <input type="checkbox"/> Male <input type="checkbox"/> Female
---	---	--

Real Party in Interest

28) Name of Real Party in Interest of Applicant (If different from applicant):	29) FCC Registration Number (FRN) of Real Party in Interest:

Contact Information (If different from the applicant)

30) First Name: Paul	MI: O	Last Name: Gagnier	Suffix:
31) Company Name: Swidler Berlin Shereff Friedman, LLP			
32) Attention To:			
33) P.O. Box:	And /Or	34) Street Address: 3000 K Street, N.W., Suite 300	
35) City: Washington		36) State: DC	37) Zip Code: 20007
38) Telephone Number: (202)424-7500		39) FAX: (202)295-8478	
40) E-Mail Address: pogagnier@swidlaw.com			

Regulatory Status

41) This filing is for authorization to provide or use the following type(s) of radio service offering (enter all that apply):

() Common Carrier () Non-Common Carrier () Private, internal communications () Broadcast Services () Band Manager

Type of Radio Service

42) This filing is for authorization to provide the following type(s) of radio service (enter all that apply):

() Fixed () Mobile () Radiolocation () Satellite (sound) () Broadcast Services

43) Interconnected Service? () Yes No

Alien Ownership Questions

44) Is the applicant a foreign government or the representative of any foreign government? () Yes No

45) Is the applicant an alien or the representative of an alien? () Yes No

46) Is the applicant a corporation organized under the laws of any foreign government? () Yes No

47) Is the applicant a corporation of which more than one-fifth of the capital stock is owned of record or voted by aliens or their representatives or by a foreign government or representative thereof or by any corporation organized under the laws of a foreign country? () Yes No

48a) Is the applicant directly or indirectly controlled by any other corporation of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country? () Yes No

48b) If the answer to the above question is 'Y', has the applicant received a ruling(s) under Section 310(b)(4) of the Communications Act with respect to the same radio service involved in this application? () Yes No

If the answer to 48b is 'N', attach to this application a date-stamped copy of a request for a foreign ownership ruling pursuant to Section 310(b)(4) of the Communications Act.

Basic Qualification Questions

49) Has the applicant or any party to this application had any FCC station authorization, license or construction permit revoked or had any application for an initial, modification or renewal of FCC station authorization, license, or construction permit denied by the Commission? () Yes No

50) Has the applicant or any party to this application, or any party directly or indirectly controlling the applicant, ever been convicted of a felony by any state or federal court? () Yes No

51) Has any court finally adjudged the applicant or any party directly or indirectly controlling the applicant guilty of unlawfully monopolizing or attempting unlawfully to monopolize radio communication, directly or indirectly, through control of manufacture or sale of radio apparatus, exclusive traffic arrangement, or any other means or unfair methods of competition? () Yes No

Aeronautical Advisory Station (Unicom) Certification

52) () I certify that the station will be located on property of the airport to be served, and, in cases where the airport does not have a control tower, RCO, or FAA flight service station, that I have notified the owner of the airport and all aviation service organizations located at the airport within ten days prior to application.

Broadband Radio Service and Educational Broadband Service Cable Cross-Ownership

53a) Will the requested facilities be used to provide multichannel video programming service? () Yes No

53b) If the answer to question 53a is yes, does applicant operate, control or have an attributable interest (as defined in Section 27.1202 of the Commission's Rules) in a cable television system whose franchise area is located within the geographic service area of the requested facilities? () Yes No

Note: If the answer to question 53b is 'Y', attach an exhibit explaining how the applicant complies with Section 27.1202 of the Commission's Rules or justifying a waiver of that rule. If a waiver of the Commission Rule(s) is being requested, Item 11a must be answered 'Y'.

Broadband Radio Service and Educational Broadband Service (Part 27)

54) (For EBS only) Does the applicant comply with the programming requirements contained in Section 27.1203 of the Commission's Rules? () Yes No

Note: If the answer to item 54 is 'N', attach an exhibit explaining how the applicant complies with Section 27.1203 of the Commission's Rules or justifying a waiver of that rule. If a waiver of the Commission Rule(s) is being requested, Item 11a must be answered 'Y'.

55) (For BRS and EBS) Does the applicant comply with Sections 27.50, 27.55, and 27.1221 of the Commission's Rules? () Yes No

Note: If the answer to item 55 is 'N', attach an exhibit justifying a waiver of that rule(s). If a waiver of the Commission Rule(s) is being requested, Item 11a must be answered 'Y'.

General Certification Statements

1)	The applicant waives any claim to the use of any particular frequency or of the electromagnetic spectrum as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise, and requests an authorization in accordance with this application.
2)	The applicant certifies that grant of this application would not cause the applicant to be in violation of any pertinent cross-ownership or attribution rules.* *If the applicant has sought a waiver of any such rule in connection with this application, it may make this certification subject to the outcome of the waiver request.
3)	The applicant certifies that all statements made in this application and in the exhibits, attachments, or documents incorporated by reference are material, are part of this application, and are true, complete, correct, and made in good faith.
4)	The applicant certifies that neither the applicant nor any other party to the application is subject to a denial of Federal benefits pursuant to §5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 862, because of a conviction for possession or distribution of a controlled substance. This certification does not apply to applications filed in services exempted under §1.2002(c) of the rules, 47 CFR § 1.2002(c). See §1.2002(b) of the rules, 47 CFR § 1.2002(b), for the definition of "party to the application" as used in this certification.
5)	The applicant certifies that it either (1) has current required ownership data on file with the Commission, (2) is filing updated ownership data simultaneously with this application, or (3) is not required to file ownership data under the Commission's rules.
6)	The applicant certifies that the facilities, operations, and transmitters for which this authorization is hereby requested are either: (1) categorically excluded from routine environmental evaluation for RF exposure as set forth in 47 C.F.R. 1.1307(b); or, (2) have been found not to cause human exposure to levels of radiofrequency radiation in excess of the limits specified in 47 C.F.R. 1.1310 and 2.1093; or, (3) are the subject of one or more Environmental Assessments filed with the Commission.
7)	The applicant certifies that it has reviewed the appropriate Commission rules defining eligibility to hold the requested license(s), and is eligible to hold the requested license(s).
8)	The applicant certifies that it is not in default on any payment for Commission licenses and that it is not delinquent on any non-tax debt owed to any federal agency.

Signature

56) Typed or Printed Name of Party Authorized to Sign

First Name: Harold	MI: W	Last Name: Kirkpatrick	Suffix:
57) Title: President			
Signature: Harold W Kirkpatrick			58) Date: 04/21/2009
FAILURE TO SIGN THIS APPLICATION MAY RESULT IN DISMISSAL OF THE APPLICATION AND FORFEITURE OF ANY FEES PAID.			
Upon grant of this license application, the licensee may be subject to certain construction or coverage requirements. Failure to meet the construction or coverage requirements will result in termination of the license. Consult appropriate FCC regulations to determine the construction or coverage requirements that apply to the type of license requested in this application.			
WILLFUL FALSE STATEMENTS MADE ON THIS FORM OR ANY ATTACHMENTS ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT (U.S. Code, Title 18, §1001) AND/OR REVOCATION OF ANY STATION LICENSE OR CONSTRUCTION PERMIT (U.S. Code, Title 47, §312(a)(1)), AND/OR FORFEITURE (U.S. Code, Title 47, §503).			

**Schedule for Waiver
Request for Extension of Time for Wireless Services**

Approved by OMB
3060 - 0798
See 601 Main Form Instructions
for public burden estimate

1) Purpose

The purpose of this submission: Enter one purpose only - 1, 2, 3, 4, I, or S (1) See below and refer to instructions.

Buildout/Coverage Requirements (Market-based services and State License Radio Service (SL) only)

- 1 Extension of Time to meet 1st buildout/coverage requirements. (List call signs in 3a)
- 2 Extension of Time to meet 2nd buildout/coverage requirements. (List call signs in 3a)
- 3 Extension of Time to meet 3rd buildout/coverage requirements. (List call signs in 3a)
- 4 Extension of Time to meet 4th buildout/coverage requirements. (List call signs in 3a)
- I Extension of Time to meet tribal lands buildout/coverage requirements. (List call signs in 3a)

Construction Requirements (Site-licensed services only)

- S Extension of Time to meet construction requirements (List, as applicable, call signs, locations or paths, and frequencies in Item 3.)

2) New Buildout/Coverage/Construction Expiration Date

Enter date (mm/dd/yy) requested: **07/26/2014**

Attach exhibit describing circumstances/justification.

3) Call Signs/Locations or Paths/Frequencies

3a) Call Sign	3b) Location Number	3c) Path Number (Microwave only)	3d) Center (Assigned) or Lower Frequency (MHz)	3e) Upper Frequency (MHz)
WQAR560				

Attachment(s):

Type	Description	Date Entered
W	<u>Exhibit One to MDSO Form 601</u>	04/21/2009

MDS OPERATIONS, INC.
FCC FORM 601 –
REQUEST FOR EXTENSION OF TIME
MVDDS STATIONS WQAR560, *et al.*
Exhibit One, Page 1 of 6

**Request for Waiver and Extension of Time to
Demonstrate “Substantial Service”**

MDS Operations, Inc. (“MDSO”), by its attorneys and pursuant to Sections 1.946(e) and 101.63(e) of the Commission’s Rules, hereby respectfully requests an extension of the five-year deadline by which to demonstrate that MDSO is providing “substantial service” under the licenses listed on the foregoing FCC Form 601, obtained in Auction No. 53. *See* 47 C.F.R. § 101.1413(b).

For the reasons stated herein, MDSO respectfully submits that its inability to complete the build-out of the subject facilities is “due to . . . causes beyond its control[.]” *See* 47 C.F.R. § 1.946(e)(1). MDSO therefore respectfully requests that it be granted an extension of time in which to demonstrate “substantial service” under Stations WQAR560, WQAR561, WQAR562, WQAR563, WQAR564, WQAR565, WQAR566, WQAR567, WQAR568, WQAR569, WQAR570, WQAR571, WQAR572, WQAR573, WQAR574, WQAR575, WQAR576, WQAR577, WQAR578, WQAR579, WQAR580, WQAR581, WQAR582, WQAR583, WQAR584, WQAR585, WQAR586, WQAR587, WQAR588, WQAR589, WQAR590, WQAR591, WQAR592, WQAR593, WQAR594, WQAR595, WQAR596, WQAR597, WQAR598, WQAR599, WQAR600, WQAR601, WQAR602, WQAR603, WQAR604, WQAR605, WQAR606, WQAR607, WQAR608, WQAR609, WQAR610, WQAR611, WQAR612, WQAR613, WQAR614, WQAR615, WQAR616, WQAR617, WQAR618 and WQAR619 for a period of (a) two (2) years from the date of a grant of MDSO’s pending request for waiver of certain MVDDS technical rules (the “Waiver Request,” more fully described below); or (b) five (5) years from a denial of that Waiver Request.¹ If the Waiver Request is granted with respect to some licenses and denied as to others, for a period of two (2) years with respect to those licenses for which a waiver is granted, and five (5) years with respect to those licenses for which a waiver is denied.

I. Background.

MDSO obtained sixty (60) licenses in Auction No. 53, all of which are in smaller markets. None of MDSO’s licenses serve a top 30 Designated Market Area, and only two of the licenses for which extensions of time are being requested authorize service within top 50 markets: WQAR560 (DMA 46) and WQAR561 (DMA 49). *See also*,

¹ We inserted July 26, 2014, which is 5 years from the original deadline, at item 2 of Schedule L on the foregoing Form 601 because ULS would not permit filing without a date certain, but we wish to emphasize that MDSO is in fact requesting 2 or 5 years, as applicable, from the date of FCC action on its pending Waiver Request, which may be sooner than the requested July 26, 2014 date, depending on action on the Waiver Request and availability of equipment.

MDS OPERATIONS, INC.
FCC FORM 601 –
REQUEST FOR EXTENSION OF TIME
MVDDS STATIONS WQAR560, et al.
Exhibit One, Page 2 of 6

Multichannel Video Distribution and Data Service Spectrum Auction Closes, Public Notice, DA 04-215 at Attachment A (rel. Feb. 2, 2004).

MDSO's affiliate, MDS America, Inc. ("MDSA") is in the business of designing and manufacturing wireless equipment and infrastructure. MDSA is the U.S. licensee of MDS International S.A.R.L., which has deployed numerous MVDDS systems outside of the United States, and its principals have participated in deploying those foreign systems. In addition to its unparalleled real-world experience constructing and operating MVDDS systems in Europe and the Middle East, to the best of MDSO's knowledge, MDSA has conducted the most significant testing of MVDDS equipment in the United States. Pursuant to experimental licenses granted by the Commission, MDSA tested the higher-powered equipment and system design that are in use overseas to ensure that such operations would not cause harmful interference to Direct Broadcast Satellite ("DBS") systems. The results of MDSA's extensive testing in the Albuquerque, NM DMA were compiled in a detailed technical report, which formed the basis of MDSO's Waiver Request.

On May 7, 2007, MDSO filed its Waiver Request,² seeking a permanent waiver of the power restrictions applicable to MVDDS, including Section 101.147(p), which limits Effective Isotropic Radiated Power ("EIRP") for MVDDS stations to 14 dBm per 24 MHz of spectrum and, to the extent necessary, Rule Section 101.105(a)(4) of the Commission's Rules, which imposes equivalent power flux density ("EPFD") limitations on MVDDS and those portions of Rule Section 101.1440 (including without limitation subsections (a)-(c)) which would otherwise prohibit operations in excess of the power limitations. The request for waiver of the EPFD limitations had been made out of an abundance of caution, and was later withdrawn by MDSO.³ The Waiver Request was filed in accordance with the Commission's suggestion in its MVDDS rule making proceeding.⁴

² The Waiver Request was corrected and supplemented on August 29, 2007. References to the Waiver Request herein refer to the corrected version unless otherwise stated; the concurrently filed supplemental pleading is referred to as the "Supplement."

³ See Reply Comments of MDS Operations, Inc., WT Docket No. 07-255 (filed January 18, 2009).

⁴ *Amendment of Parts 2 and 25 of the Commission's Rules to Permit Operation of NGSO FSS Systems Co-Frequency with GSO and Terrestrial Systems in the Ku-Band Frequency Range; Amendment of the Commission's Rules to Authorize Subsidiary Terrestrial Use of the 12.2-12.7GHz Band by Direct Broadcast Satellite Licensees and Their Affiliates; and Applications of Broadwave USA, PDC Broadband Corporation, and Satellite Receivers, Ltd. to Provide a Fixed Service in the 12.2-12.7GHz Band*, Fourth Memorandum Opinion and Order, 18 FCC Rcd. 8428, 8469 (2003) ("Fourth MO&O") ("MVDDS providers may file petitions for waiver of the general MVDDS limits adopted in the Second R&O"); *Amendment of Parts 2 and 25 of the Commission's Rules to Permit Operation of NGSO FSS Systems Co-Frequency with GSO and Terrestrial*

MDS OPERATIONS, INC.
FCC FORM 601 –
REQUEST FOR EXTENSION OF TIME
MVDDS STATIONS WQAR560, et al.
Exhibit One, Page 3 of 6

The Commission sought comment on the Waiver Request by Public Notice of November 9, 2007.⁵ Echostar and DirecTV filed oppositions to the Waiver Request on December 19, 2007, to which MDSO replied on January 18, 2008. Despite MDSO's pleas that the Commission act well in advance of its July 26, 2009 "substantial service" deadlines for the licenses obtained in Auction No. 53, and numerous *ex parte* meetings between the parties and the Commission, the Waiver Request remains pending.

II. An Extension is Necessary Due to Facts Beyond MDSO's Control.

Section 1.946(e) of the Commission's Rules permits an extension of coverage requirements when "failure to meet the construction or coverage deadline is due to involuntary loss of site or other causes beyond [the licensee's] control." See 47 C.F.R. § 1.946(e)(1). Section 1.925 of the Commission's Rules provides that a waiver of the Rules, including those governing construction, is appropriate where "[t]he underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or [i]n view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative." See 47 C.F.R. § 1.925(b)(3)(i)-(ii). All of these standards are met by this extension request.

There is currently no equipment for MVDDS that is commercially available in the United States. As previously indicated, equipment is available – and operating – overseas; however, that equipment is designed for higher-powered operations than are permitted under the Commission's Rules. Absent a grant of the Waiver Request, it is not technically or commercially viable to build out and operate MVDDS systems using that

Systems in the Ku-Band Frequency Range; Amendment of the Commission's Rules to Authorize Subsidiary Terrestrial Use of the 12.2-12.7GHz Band by Direct Broadcast Satellite Licensees and Their Affiliates; and Applications of Broadwave USA, PDC Broadband Corporation, and Satellite Receivers, Ltd. to Provide A Fixed Service in the 12.2-12.7GHz Band, Memorandum Opinion and Order and Second Report and Order, 17 FCC Rcd. 9614, 9704 (2002) ("Second R&O") ("We clarify that MVDDS applicants are not limited to using technology that complies with the operating parameters adopted here. However, any entity seeking to employ a terrestrial service technology that does not comply with our technical rules must file a waiver petition . . . As part of the waiver process, the entity must submit an independent technical demonstration of its equipment and technology. . . . We find that the independent testing requirement will balance these competing interests for terrestrial wireless technologies that do not comply with the technical rules").

⁵ *Wireless Telecommunications Bureau Seeks Comment on Petition of MDS Operations, Inc. for Waiver of Multichannel Video Distribution and Data Service Technical Rules, Public Notice, DA 07-4575 (rel. November 9, 2007).*

MDS OPERATIONS, INC.
FCC FORM 601 –
REQUEST FOR EXTENSION OF TIME
MVDDS STATIONS WQAR560, et al.
Exhibit One, Page 4 of 6

equipment. The equipment and system design techniques used elsewhere in the world do not provide a “reasonable alternative” under the Rules as currently in effect. It is MDSO’s understanding that at least some entities, including MVDDS licensee DTV Norwich, LLC, have undertaken attempts to develop equipment that will comply with the Commission’s strict technical requirements for MVDDS,⁶ but to date no such equipment is available on the market. The inability of MVDDS licenses to obtain and deploy equipment consistent with the Commission’s Rules is evidenced by the Commission’s own ULS records; to date, not a single MVDDS system has made a showing of substantial service.

The subject request is similar to others that the Commission has granted to licensees in other new, advanced services for which equipment is not reasonably available. For example, the Commission granted licensees in the Local Multipoint Distribution Service (“LMDS”) an extension of their ten-year “substantial service” deadline because the limited equipment capable of operating within the LMDS bands was subject to either significant technical limitations or was prohibitively expensive to deploy. *Applications Filed by Licensees in the Local Multipoint Distribution Service (LMDS) Seeking Waivers of Section 101.1011 of the Commission’s Rules and Extensions of Time to Construct and Demonstrate Substantial Service*, 23 FCC Rcd. 5894 (Wir. Tel. Bur. 2008) (“LMDS Extension Order”). The extension granted in that case extended the construction period for some licensees by as much as four years beyond their first license term. *Id.* at ¶ 26.

Likewise, the Commission granted licenses in the Wireless Communications Service (“WCS”) an extension of their 10-year, end-of-license-term substantial service deadline, in part due to the lack of equipment that was economically feasible and did not suffer from technical problems. *Consolidated Request of the WCS Coalition for Limited Waiver of the Construction Deadline for 132 WCS Licenses*, 21 FCC Rcd. 14134, ¶ 10 (Wir. Tel. Bur. 2006) (“WCS Extension Order”). The Commission further noted that the technical restrictions imposed upon WCS for the protection of Satellite Digital Audio Radio Service (“SDARS”) “may have impeded the development of WCS equipment[.]” *Id.* The Commission has granted similar extensions to licensees in other services, including, in one instance, *second* extension of the “substantial service” deadlines. *See Requests of Progeny LMS, LLC and PCS Partners, LP for Waiver of Multilateration Location and Monitoring Services Construction Rules*, 46 CR 1079, DA 08-2614, ¶¶ 4-6, 21-23 (Wir. Tel. Bur. 2008) (“Progeny LMS”) (second extensions, generally of 4 years, to M-LMS licensees, in part due to lack of commercially available equipment, noting that “significant restrictions on M-MLS operations in the Commission’s current M-LMS rules” may have affected equipment development).

⁶ See e.g., ULS File No. 0003516340.

MDS OPERATIONS, INC.
FCC FORM 601 –
REQUEST FOR EXTENSION OF TIME
MVDDS STATIONS WQAR560, et al.
Exhibit One, Page 5 of 6

MDSO respectfully submits that its grounds for extension of the five-year substantial service deadline are equally, if not more, compelling as those relied upon in the *LMDS Extension Order*, *WCS Extension Order*, and *Progeny LMS*. As with the LMDS, WCS and M-LMS services, there is no commercially available equipment that can be used for MVDDS in accordance with the current technical rules for the service. Moreover, as with WCS and M-LMS, significant technical and operational restrictions, including coordination and interference protection obligations, are imposed upon MVDDS. See 47 C.F.R. §§ 101.103(f); 101.105(a)(4); 101.113(a)(11); 101.129(b); 101.1421; 101.1440. The strict power limits and other restrictions applicable to MVDDS complicate equipment and system design for this service in the U.S. Moreover, unlike the LMDS and WCS licensees to whom relief was granted, MVDDS licensees have had only five years, not ten, within which to develop or adapt equipment to the Commission's strict technical Rules for the service. Unlike the M-LMS licensees to whom relief was granted in *Progeny LMS*, this is the first extension requested by MDSO.

**III. The Requested Extension Would Further, not Undermine, the Purposes of
the Commission's Rules, and Would Serve the Public Interest**

The public interest would be served by a grant of the requested extension. The Commission has expressed its hope that MVDDS will provide broadband access, multichannel video, and other advanced services to consumers. See e.g., *Second R&O*, 17 FCC Rcd. at 9617, 9667. The deployment of high-speed broadband networks, especially to unserved and underserved areas, is a significant policy goal not only of this Commission, but also of the Administration and Congress. See American Recovery and Reinvestment Act, Pub. L. 111-5 at Division A, Title I and Division A, Title II (allocating a total of more than \$7 billion for broadband grant programs).

A grant of the requested extension would further that important policy by leaving the affected spectrum in the hands of a licensee that is ready, willing and able to construct as soon as either it receives the technical waiver necessary to enable it to use the equipment and system design techniques that have been successfully deployed by its affiliate overseas, or equipment that makes operation under the Commission's extant rules technically viable and economically feasible becomes available. As indicated above, and in the Waiver Request, MDSO's licenses serve small markets; the vast majority of its licenses cover DMAs below the top 50, which contain numerous rural and exurban communities. A grant of the requested extension will best serve the public in those low-population underserved areas, by leaving the subject spectrum in the hands of a licensee with the expertise to construct and operate broadband video and data systems and who is committed to commencing construction as soon as it is technologically possible to do so.

MDS OPERATIONS, INC.
FCC FORM 601 –
REQUEST FOR EXTENSION OF TIME
MVDDS STATIONS WQAR560, *et al.*
Exhibit One, Page 6 of 6

As indicated by MDSO's requests for alternate relief, MDSO is committed to putting this spectrum to use as rapidly as possible, and is seeking no more time than it believes is strictly necessary. In the event that its Waiver Request is granted, MDSO is requesting an extension of only two years from the date of Commission action – roughly the amount of time that remained in the five-year construction period when MDSO first filed its Waiver Request. In that event, MDSO anticipates constructing and commencing services in many DMA if far less than two years, and would gladly coordinate with the Commission's staff regarding benchmarks for the sixty DMAs that are subject to this request, should the Commission require further assurances of MDSO's ability and intentions to rapidly deploy services to the public. If on the other hand, the Waiver Request is not granted, a more significant extension would be required for the industry to complete development and/or adaptation of equipment and system design techniques, and testing of the same, to allow for construction of MVDDS systems; MDSO is therefore asking for five years under those circumstances.

Conclusion

For all the foregoing reasons, MDSO respectfully submits that an extension of the deadline in which to demonstrate substantial service is being provided under the subject licenses is necessitated by causes beyond MDSO's control and would serve the public interest, and that this application should be expeditiously granted.